

OGC Has Reviewed

DA QA/QC: 03/07/01. SY

OGC 73-1683

7 September 1973

MEMORANDUM FOR: Chief, Regulations Control Staff

STATINTL SUBJECT : Proposed Revisions of [REDACTED]
[REDACTED] Personnel Evaluations

REFERENCE : Memo fr C/Regulations Control Staff,
same subj., dtd 23 Aug. 73

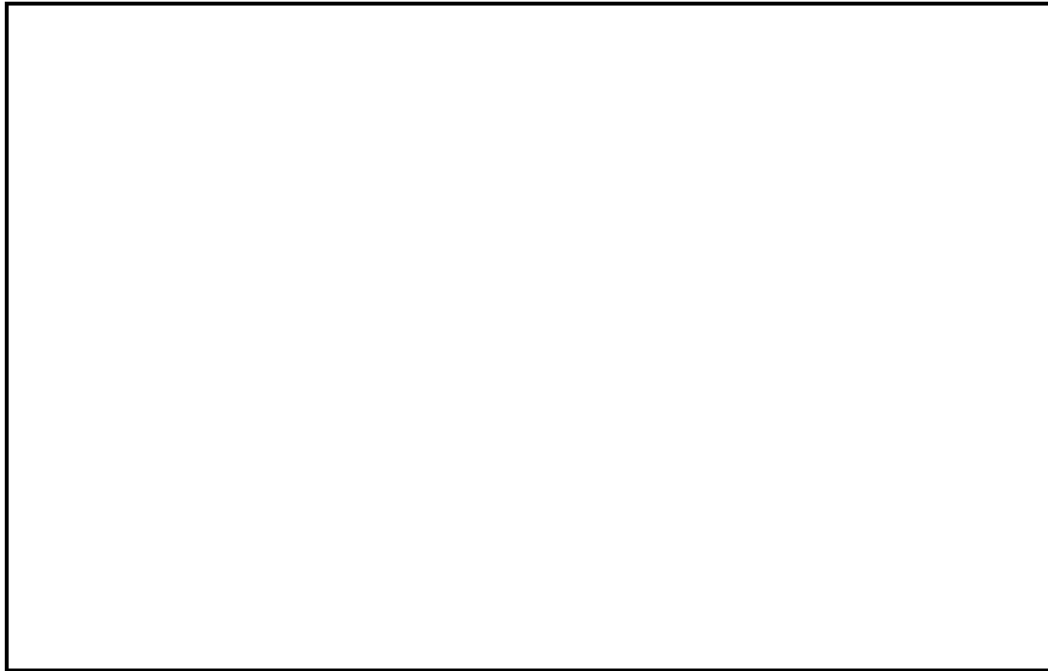
STATINTL

Referent memorandum was sent to this Office for information. We recommend the following:
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1. The current [REDACTED] contains no statement as to the statutory authority for the promulgation of Agency personnel regulations. Our search of the laws does not disclose any explicit statutory authority for such regulations. However, it is our opinion that that authority is certainly implicitly established by three separate sections of Title 50 of the Code as follows:



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5 U.S.C.A. 302(b) states, in part, that:

In addition to the authority to delegate conferred by other law, the head of an agency may delegate to subordinate officials the authority vested in him—

(1) by law to take final action on matters pertaining to the employment, direction, and general administration of personnel under his agency.

The term "agency" as used in this section is defined at 5 U.S.C.A. 5721, which states that "agency" means, among other things, "an Executive agency." "An Executive Agency" is defined at 5 U.S.C.A. 105 to include "an independent establishment," which is defined at 5 U.S.C.A. 104 to mean, in part, "an establishment in the executive branch which is not an Executive department, military department, Government corporation, or part thereof, or part of an independent establishment." As the Agency is not included in any of those entities excluded from this definition, it must be deemed to be an independent establishment and, therefore, 5 U.S.C.A. 302(b) is statutory authority for our delegation of authority. Thus, it is our opinion that there is legal basis for the subject regulations and the delegations therein. Accordingly, we recommend that a statement summarizing the above be included in [redacted] (most likely in [redacted]). Such a statement might read as follows:

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STATINTL 2. The proposed policy for performance evaluation under [redacted] contains the statement that:

Employees will be encouraged to attach a written comment to their performance evaluation when they feel that it will contribute to the record of their job performance.

It is our understanding that this same provision is applicable to the proposed policy for performance evaluation under [redacted]. Therefore, we recommend that the same statement be included in [redacted]. There-

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3. We recommend that the statement, "In accordance with the provisions of this paragraph:" be added directly after the heading of subsection b(6) RESPONSIBILITIES, so as to relieve any ambiguity that those responsible must not deviate from the provisions of this paragraph.

STATINTL

4. The proposed [redacted] states that, among other things, the performance evaluation is "...to provide an official record of each employee's job performance in terms of Agency-wide criteria." As the Agency-wide criteria is currently undefined, we recommend that the phrase "in terms of Agency-wide criteria" not be included in the regulation.

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No

5. We assume that the "competitive evaluation systems" mentioned in paragraph a of proposed [redacted] are the same as the "comparative evaluation" discussed in paragraphs a(2) and c. We recommend that the terminology be made the same.

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Office of General Counsel